IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

Crl.Rev.Pet.No. 699 of 2000(A)

CRL.A.35/1995 OF SESSIONS COURT, KOLLAM DTD. 03/07/2000,
SC.169/1989 OF ASSISTANT SESSIONS COURT, KOLLAM.

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PETITIONERS/APPELLANTS/ACCUSED NOS.1,2,5 & 6:

1. **SIVARAMAN BABU,**
   VALATHANDAYIL VEEDU,
   PUTHENSANKETHAM MURI,
   THEVALLAKKARA VILLAGE.

2. **GOPINATHAN SAJEEVAN,**
   PAZHAYATHU VEEDU,
   DO. DO.

3. **RAVEENDRAN PUSHPARAJAN,**
   MUDIYIL VEEDU,
   DO. DO. DO.

4. **RAVEENDRAN RAJU,**
   DO. DO. DO.

BY ADV.SRI.S.RAJEEV.

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, (CRIME NO. 50/89 OF CHAVARA THEKKUMBHAGAM POLICE STATION).

BY PUBLIC PROSECUTOR SRI. K.R. SIVAKUMAR.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 30/07/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

prv.

J.B.KOSHY, J.

Crl.R.P.No.699 OF 2000

Dated 30th July, 2007

ORDER

Ten persons were charge sheeted for offences punishable under Sections 143, 147, 148, 307 and 324 read with Section 149 of the Indian Penal Code. Out of the above, 9th accused was absconding and his case was split up. The trial court acquitted A10 and the following punishment was imposed on A1 to A8:

> "The accused 1 to 8 are sentenced to undergo R.I. For 2 months each u/s 143 IPC, R.I. for 2 months each u/s 147 IPC, R.I. for 3 months u/s 148 I.P.C., R.I. for 2 years and fine of Rs.2000/- each for the offence punishable u/s 307 I.P.C. and R.I. for 3 months each u/s 324 I P C. In default of payment of fine to undergo R.I. for a further period of three months each."

In appeal, conviction and sentence imposed on A1, A2, A5 and A6 were confirmed. A3, A4, A7 and A8 were acquitted by giving the benefit of doubt.

2. The case of the prosecution was that on 30.6.89 at 9.15 a.m., the accused formed themselves into an unlawful assembly armed with deadly weapons such as sword and sticks

came to the road leading from Puthensangetham to Aiyankoikkal road on the northern side of Pattarayyathu purayidom and inflicted injuries on the body of CWs.1 and 2 with dangerous weapons and attempted to kill PW1. CW1 has given Ext.P1 F.I. Statement on the same day and that was recorded by the head constable of Chavara police station and he registered Crime No.50/98 of that police station against the accused. The injured were taken to the hospital and treated till 24.7.89. PWs 1 and 4 were the injured witnesses. The case of the defence was that the petitioners were members of DYFI (CPIM) and the prosecution witnesses were members of AIYF (CPI). There were clashes between DYFI and AIYF in the locality and the accused are not responsible for the offences, but, they were charge sheeted only because they were members of DYFI. The defence evidence adduced in this case clearly shows that a group of people of DYFI attacked AIYF people. PWs 1 and 4 were the injured witnesses. They identified the accused in that group. Admittedly, there were more than five persons in the group. It was an unlawful assembly and with the common intention the attack was made. A1 and A2 are the persons who actually caused the injuries and all the assembly members were have the common object. When a group of people armed with several weapons attack, there may be

difficulty in identification of the actual weapons. F.I. Statement was given immediately after the incident on 30.6.1989 and investigation was started on the same day. Considering the evidence of the eye witnesses, even though benefits of doubt were given to some accused by the trial court, conviction of A1 and A2 were confirmed. Injured witnesses clearly identified them. Considering the evidence, I am of the view that it was proved beyond doubt that the accused were members of unlawful assembly and their group in furtherance of their common intention inflicted injuries on PWs 1 and 4 with weapons. Then the question is what is the punishment to be imposed. There is no reason to differ from the conviction under Section 143 IPC. However, considering the fact that the incident occurred in 1989 and the accused persons were very young at that time, sentence is modified. Instead of imprisonment, I impose a fine of Rs.3,000/- each u/s section 143 IPC. Similarly, conviction under Section 148 IPC is confirmed and sentence is modified. Instead of imprisonment I impose a fine of Rs.5,000/= each under Section 148 IPC. Since conviction and sentence were imposed under Section 148 IPC, I am of the opinion that separate punishment need not be imposed again under Section 147 IPC. With regard to the charge under Section 307 IPC, I cannot gather any evidence

to show that common object of the unlawful assembly was to murder the injured persons. It cannot be stated that there was any attempt to murder those persons. The prosecution case also was that there were clashes between DYFI and AIYF and they were only gathered for getting more students in the school in their group and to threaten them. In any event, there is no evidence to show that there was an attempt to murder. Injuries inflicted were also not serious enough as to cause death as can be seen from the wound certificates. Therefore, I acquit the petitioners from the charge under section 307 IPC. For the offence under Section 324 IPC, the petitioners are convicted and sentenced to pay a fine of Rs.5,000/= each instead of imprisonment. If fine amount is realised, Rs.7,500/= each should be given to PWs 1 and 4 as compensation. The conviction and sentence are modified accordingly.

The revision petition is allowed in part.

J.B.KOSHY
Judge

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